

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-07 NSAE-00 EPG-02 FAA-00 L-03
SS-15 NSC-05 /054 W
-----060570 231657Z /43
P 231610Z JUN 77
FM AMEMBASSY LONDON
TO SECSTATE WASHDC PRIORITY 5474

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PASS DOT (DAVENPORT, KAMM)

E.O. 11652: N/A
TAGS: EAIR, UK
SUBJECT: US-UK CIVAIR AGREEMENT: CAPACITY PROVISIONS

IN VIEW OF MUCH DISCUSSION, CHANGE PREVIOUSLY RELAYED
ON CAPACITY ANNEX, (SEE LONDON 10098, 10099, 10104)
AGREED, INITIALED TEXT OF FULL CAPACITY ANNEX FOLLOWS:

BEGIN QUOTE - IN ORDER TO ENSURE THE SOUND APPLICATION
OF THE PRINCIPLES SET FORTH IN ARTICLE 11 OF THE
AGREEMENT (US RENEGOTIATION 13) AND IN VIEW OF THE
SPECIAL CIRCUMSTANCES OF NORTH ATLANTIC AIR TRANSPORT,
THE CONTRACTING PARTIES HAVE AGREED TO THE FOLLOWING
ARRANGEMENTS WITH RESPECT TO COMBINATION AIR SERVICES
ON US ROUTES 1 AND 3 AND UK ROUTES 1, 3, 4 AND 5
SPECIFIED IN ANNEX 1 OF THE AGREEMENT.

THIS ADDENDUM IS DESIGNED TO PROVIDE A CONSULTATIVE
PROCESS TO DEAL WITH CASES OF EXCESS PROVISION OF
CAPACITY, WHILE ENSURING THAT DESIGNATED AIRLINES RE-
HIN ADEQUATE SCOPE FOR MANAGERIAL INITIATIVE IN
ESTABLISHING SCHEDULES AND THAT THE OVERALL MARKET
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SHARE ACHIEVED BY EACH DESIGNATED AIRLINE WCIL DEPEND
UPON PASSENGER CHOICE RATHER THAN THE OPERATION OF
ANY FORMULA OF LIMITATION MECHANISM. IN KEEPING
WITH THESE OBJECTIVES, THE CONTRACTING PARTIES DESIRE
TO AVOID UNDULY FREQUENT INVOCATION OF THE CONSULTA-
TIVE MECHANISM OR LIMITATION PROVISION IN ORDER NOT
TO PLACE AN UNDUE BURDEN OF DETAILED SUPERVISION OF

AIRLINE SCHEDULING ON THE CONTRACTING PARTIES.

1. NOT LATER THAN 180 DAYS BEFORE EACH SUMMER AND WINTER TRAFFIC SEASON, EACH DESIGNATED AIRLINE SHALL FILE WITH BOTH CONTRACTING PARTIES ITS PROPOSED SCHEDULES FOR COMBINATION SERVICES ON EACH GATEWAY ROUTE SEGMENT FOR THAT SEASON. SUCH SCHEDULES SHALL SPECIFY ALL THE POINTS TO BE SERVED ON EACH FLIGHT. THE DESIGNATED AIRLINES MAY AMEND THEIR FILINGS IN THE LIGHT OF THE SCHEDULES SO FILED AND SHALL FILE SUCH AMENDMENTS WITH BOTH CONTRACTING PARTIES NOT LATER THAN 165 DAYS BEFORE EACH SUMMER AND WINTER TRAFFIC SEASON. IN THE EVENT THAT ADJUSTMENTS IN SCHEDULES ARE LATER REQUIRED DUE TO CIRCUMSTANCES BEYOND THE CONTROL OF A DESIGNATED AIRLINE, SUCH AIRLINE MAY MAKE ADJUSTMENTS TO ITS PREVIOUSLY FILED SCHEDULES, WHICH ADJUSTMENTS SHALL BE FILED WITH BOTH CONTRACTING PARTIES ON A TIMELY BASIS. IF SUCH ADJUSTMENTS INVOLVE AN INCREASE IN FREQUENCY, SUCH INCREASE WILL BE SUBJECT TO THE APPROVAL OF THE OTHER CONTRACTING PARTY.

2. IF EITHER CONTRACTING PARTY BELIEVES THAT AN INCREASE IN FREQUENCY OF SERVICE ON A GATEWAY ROUTE SEGMENT CONTAINED IN ANY OF THE SCHEDULES SO FILED WITH IT BY A DESIGNATED AIRLINE OF THE OTHER CONTRACTING LIMITED OFFICIAL USE

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PARTY MAY BE INCONSISTENT WITH THE PRINCIPLES SET FORTH IN ARTICLE 11 OF THE AGREEMENT, IT SHALL, NO LATER THAN 150 DAYS BEFORE THE RELEVANT TRAFFIC SEASON, NOTIFY THAT OTHER CONTRACTING PARTY (HEREINAFTER CALLED THE "REQUESTING PARTY"), GIVING ITS REASONS FOR SO BELIEVING, AND IN ITS DISCRETION, INDICATING THE INCREASE, IF ANY, IN FREQUENCY OF SERVICE ON THE GATEWAY ROUTE SEGMENT IT CONSIDERS CONSISTENT WITH THE AGREEMENT. SUCH NOTIFICATION SHALL NOT, HOWEVER, BE PERMITTED IN RESPECT OF A SCHEDULE FOR A SUMMER TRAFFIC SEASON WHICH SPECIFIES A TOTAL OF 120 OR FEWER ROUNDTRIP COMBINATION FREQUENCIES ON ANY GATEWAY ROUTE SEGMENT OR FOR A WINTER TRAFFIC SEASON WHICH SPECIFIES 88 OR FEWER SUCH FREQUENCIES. THE REQUESTING PARTY SHALL REVIEW THE INCREASE IN FREQUENCY OF SERVICE CALLED INTO QUESTION IN LIGHT OF THE PRINCIPLES SET FORTH IN ARTICLE 11 OF THE AGREEMENT, TAKING INTO ACCOUNT THE PUBLIC REQUIREMENT FOR ADEQUATE CAPACITY, THE NEED TO AVOID UNECONOMIC EXCESS CAPACITY, THE DEVELOPMENT OF ROUTES AND SERVICES, THE NEED FOR VIABLE AIRLINE OPERATIONS AND THE CAPACITY OFFERED BY AIRLINES

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SS-15 NSC-05 /054 W
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OF THIRD COUNTRIES BETWEEN THE POINTS IN QUESTION.
THE REQUESTING PARTY SHALL, NO LATER THAN 120 DAYS
BEFORE THE RELEVANT TRAFFIC SEASON, NOTIFY THE OTHER
CONTRACTING PARTY (HEREINAFTER CALLED THE "RECEIVING
PARTY") OF THE EXTENT TO WHICH IT CONSIDERS THAT THE
INCREASE IN FREQUENCY IN QUESTION IS CONSISTENT WITH
THE PRINCIPLES SET FORTH IN ARTICLE 11 OF THE AGREEMENT.

3. IF THE RECEIVING PARTY IS NOT SATISFIED WITH THE
REQUESTING PARTY'S DETERMINATION WITH RESPECT TO THE
INCREASE IN FREQUENCY IN QUESTION, IT SHALL SO NOTIFY
THE REQUESTING PARTY NO LATER THAN 105 DAYS BEFORE
THE RELEVANT TRAFFIC SEASON, AND CONSULTATIONS SHALL
BE HELD AS SOON AS POSSIBLE AND IN ANY EVENT NOT LATER
THAN 90 DAYS BEFORE THE TRAFFIC SEASON. IN SUCH
CONSULTATIONS, BOTH PARTIES SHALL EXCHANGE RELEVANT
ECONOMIC DATA, INCLUDING FORECASTS OF THE PERCENTAGE
INCREASE IN TOTAL ON-BOARD REVENUE PASSENGER TRAFFIC
EXPECTED ON THE GATEWAY ROUTE SEGMENT IN QUESTION FOR
THE UPCOMING TRAFFIC SEASON COMPARED WITH TOTAL ON-
BOARD REVENUE PASSENGER TRAFFIC CARRIED IN THE PREVIOUS
CORRESPONDING SEASON.

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4. IF NO AGREEMENT IS REACHED IN SUCH CONSULTATIONS PURSUANT TO PARAGRAPH 3 ABOVE, WITHIN 75 DAYS BEFORE THE TRAFFIC SEASON, EACH DESIGNATED AIRLINE ON THE GATEWAY SEGMENT WHERE AN INCREASE IN FREQUENCY OF SERVICE HAS BEEN CALLED INTO QUESTION SHALL BE ENTITLED TO OPERATE DURING THE UPCOMING TRAFFIC SEASON THE SCHEDULE IT PROPOSES TO OPERATE, BUT NOT MORE THAN THE SUM OF (A) THE TOTAL NUMBER OF ROUNDTRIP COMBINATION FREQUENCIES OPERATED BY THAT AIRLINE ON THE GATEWAY ROUTE SEGMENT DURING THE PREVIOUS CORRESPONDING SEASON, AND (B) SUCH ROUNDTRIP COMBINATION FREQUENCIES AS ARE DETERMINED BY APPLYING THE AVERAGE OF THE FORECAST PERCENTAGES MENTIONED IN PARAGRAPH 3 ABOVE TO THE TOTAL NUMBER OF ROUNDTRIP COMBINATION FREQUENCIES OPERATED BY THAT DESIGNATED AIRLINE ON THE GATEWAY ROUTE SEGMENT DURING THE PREVIOUS CORRESPONDING SEASON, BUT NO FEWER THAN 20 ROUNDTRIP COMBINATION FREQUENCIES DURING A SUMMER TRAFFIC SEASON OR 15 DURING A WINTER TRAFFIC SEASON. IN NO EVENT SHALL A DESIGNATED AIRLINE BE REQUIRED TO OPERATE FEWER THAN 120 ROUNDTRIP COMBINATION FREQUENCIES DURING A SUMMER TRAFFIC SEASON OR 88 DURING A WINTER TRAFFIC SEASON.

5. EACH CONTRACTING PARTY SHALL ALLOW FILED SCHEDULES WHICH HAVE NOT BEEN QUESTIONED UNDER PARAGRAPH 3 ABOVE TO BECOME EFFECTIVE ON THEIR PROPOSED EFFECTIVE DATES. EACH CONTRACTING PARTY SHALL TAKE SUCH STEPS AS MAY BE NECESSARY TO ALLOW IMPLEMENTATION OF SCHEDULES WHICH MAY HAVE BEEN DETERMINED AS A RESULT OF AGREEMENT DURING CONSULTATIONS OR, IN THE ABSENCE OF SUCH AGREEMENT, AS PROVIDED IN PARAGRAPH 4 ABOVE.

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6. EACH DESIGNATED AIRLINE SHALL BE ENTITLED TO OPERATE EXTRA SECTIONS ON ANY GATEWAY ROUTE SEGMENT, PROVIDED THAT SUCH EXTRA SECTIONS ARE NOT ADVERTISED OR HELD OUT OR OPERATED AS SEPARATE SERVICES.

7. DEFINITIONS:

(A) A "GATEWAY ROUTE SEGMENT" MEANS THE POINT OF LAST

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SS-15 NSC-05 /054 W
-----060639 231656Z /43

P 231610Z JUN 77
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DEPARTURE AND FIRST ARRIVAL IN THE HOMELAND OF A
DESIGNATED AIRLINE AND THE POINT OR POINTS IN THE
TERRITORY OF THE OTHER COUNTRY SERVED BY THAT DESIG-
NATED AIRLINE.

(B) "SUMMER AND WINTER TRAFFIC SEASONS" MEAN, RESPECT-
IVELY, THE PERIODS FROM APRIL 1 THROUGH OCTOBER 31 AND
FROM NOVEMBER 1 THROUGH MARCH 31.

(C) "REVENUE PASSENGER" MEANS A PASSENGER PAYING 25
PERCENT OR MORE OF NORMAL FARES.

8. IN THE EVENT THAT EITHER CONTRACTING PARTY BELIEVES
THAT THIS ADDENDUM IS NOT ACHIEVING THE OBJECTIVES SET
FORTH IN THE INTRODUCTORY PARAGRAPH, THEY MAY CONSULT
AT ANY TIME, PURSUANT TO ARTICLE 14 OF THE AGREEMENT,
TO CONSIDER APPROPRIATE ALTERATIONS IN THE PROCEDURES
OR NUMERICAL LIMITATIONS.

REVISION, THIS ADDENDUM SHALL REMAIN IN FORCE FOR A
FURTHER PERIOD OF TWO YEARS AFTER SUCH PERIOD OF FIVE
YEARS. END OF QUOTE.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AVIATION AGREEMENTS
Control Number: n/a
Copy: SINGLE
Sent Date: 23-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977LONDON10444
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770224-1165
Format: TEL
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770624/aaaaavan.tel
Line Count: 268
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 49f0ce77-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 14-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2051129
Secure: OPEN
Status: NATIVE
Subject: US-UK CIVAIR AGREEMENT: CAPACITY PROVISIONS IN VIEW OF MUCH DISCUSSION, CHANGE PREVIOUSLY RELAYED ON CAPACITY ANNEX, (SEE LONDON 10098, 10099, 10104
TAGS: EAIR, UK, US
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/49f0ce77-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009